Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1975

No. 74-1529

ROBERT J. HENDERSON, Superintendent
of Auburn Correctional Facility,

Petitioner,

v.

TIMOTHY G. MORGAN,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

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QUESTIONS PRESENTED

Is the issue of whether a guilty plea has been intelligently entered by the accused one of fact or law.

Has the lower court by its decision and the Circuit Court of Appeals for the Second Circuit by its affirmance adopted a completely new principle of law

or have they merely applied the principle for which the petitioner contends.

SUMMARY OF ARGUMENT

The respondent Morgan contends that whether he knowingly and intelligently pleaded guilty to murder in the second degree is of necessity a question of fact and the lower court's decision that his plea was not in accordance with due process since it is supported by evidence in the record should be affirmed by this Court.

In addition, it is his position that in reaching its decision the lower court applied the correct principle of law, the so-called totality of circumstances rule, to the facts found by it and did not enunciate any new, unique or different standard for resolving issues of this nature.

ARGUMENT

THE QUESTION OF WHETHER THE RESPONDENT INTELLIGENTLY PLEADED GUILTY TO THE CRIME OF MURDER IN THE SECOND DEGREE IS A QUESTION OF FACT, THE DETERMINATION OF WHICH SHOULD NOT BE DISTURBED BY THIS COURT BECAUSE IT IS SUPPORTED BY EVIDENCE IN THE RECORD.

When the question to be determined is whether any act has been performed in an intelligent and knowing manner, the answer must be found, if at all, from an

examination of the act, the circumstances in which it was performed, the statements which may have accompanied it, the consequences which of necessity must have followed it and most importantly the personality, character and intellect of the person performing it.

It is merely stating the obvious to point out that two people can perform the identical act, under identical circumstances and indeed simultaneously, with the vital difference that one actor is performing intelligently and the other is not.

It is obvious that the function of determining which actor was rational and which was not can only be performed by a court that sees and hears the witnesses. The language at the top of page 13 of the petitioner's brief recognizes this.

> The underlying principle common to all these cases is that in determining whether a guilty plea is knowing and voluntary, each case must be carefully considered *on its own facts.* (emphasis supplied)

In addition, the principle has received judicial recognition in the *United States ex rel. Crosby v. Brierly*, 404 F.2d 790 (3rd Cir. 1968) where the court at page 796 stated unequivocally that a question of this nature is always a question of fact.

That the Federal Appellate judicial system recognizes this principle is amply demonstrated by reading the Federal cases cited in the petitioner's brief. In not one of those cases dealing with this question did an Appellate Court reverse a lower court's decision that a plea was invalid if there was evidence in the record to support the factual finding of the lower court. In fact,

among all of those cases the only one in which a lower court finding in favor of the invalidity of a plea was set aside was *United States ex rel. Brown v. LaVallee*, 424 F.2d 457 (2d Cir. 1970), cert. denied 401 U.S. 942 (1971) where the Court of Appeals reversed the district court because the lower court's findings were clearly erroneous.

No such infirmity exists in the record of this proceeding. That record makes it perfectly clear that on the issue of whether Morgan was advised that his plea constituted an admission that he intended the death of the deceased Morgan denied being so advised. One defense counsel admitted that he had never discussed this aspect with Morgan and the second was uncertain but thought he might have.

The court resolved this conflict of testimony, insofar as it is a conflict, in favor of Morgan and went on to set aside his plea as not being an intelligent one.

On this aspect of the matter it should be remembered that the issue which the Court was deciding was whether the plea was intelligently made. The question of whether the accused had been advised that intent was an element of the crime to which he pleaded was a subsidiary issue, important only insofar as it affected the fundamental question of the intelligence of the plea.

In other words, what the lower court's decision signifies is that the failure to inform the accused of this element of the crime of murder in the second degree, taken into consideration with the other surrounding circumstances, led the Court to the conclusion that the plea was not an intelligent one and that it should be set aside.

That decision is factually sound and legally correct and should be affirmed by this Court.

THE LOWER COURT IN REACHING ITS DETERMINATION HAS NOT ADOPTED ANY NEW PRINCIPLE OF LAW BUT INSTEAD PROPERLY APPLIED THE EXISTING STANDARD FOR DETERMINING ISSUES OF THIS NATURE.

The petitioner interprets the district court's opinion as holding that no guilty plea is constitutionally valid unless there is affirmative proof that each and every element of the charge has been explained to the accused prior to the plea. This, says the petitioner, is a completely novel principle of law and a potentially catastrophic one because it would cast doubt upon the validity of literally thousands of pleas upon which sentences are presently being served.

It seems fair to state that if this is the effect of the district court's opinion, it certainly was not its purpose. Nowhere in that opinion does the court suggest even inferentially that it is establishing a new principle or standard to be used in deciding issues of this nature. The reference at page 14 of the petitioner's brief to the effect that the district court acknowledged that it was looking at the case in the light of new law refers to comments made by the court during and immediately following the evidentiary hearing and which comments are in the nature of general remarks by the court. There is certainly nothing in the opinion which even implies that the court thought it was breaking new ground.

Instead, the court specificially states the standard which it says is to be applied on issues such as this. (*Appendix*, page 116a). That standard, the so-called totality of circumstances rule, is the very standard which the petitioner contends should have been used by

the lower court in reaching its decision in this case. Apparently the petitioner feels that although stating the standard, the court didn't apply it.

Insofar as the respondent is able to understand the petitioner's argument, it appears to be based upon the following premises:

1. Since the only factor cited by the lower court was the failure to inform the respondent of the elements of the crime to which he pleaded, the court must of necessity have ignored all other circumstances surrounding the plea.

2. Since the only element considered by the court under the petitioner's argument was the failure to inform Morgan that intent was an element of the crime charged, the decision stands for the proposition that in all pleas there must be an affirmative showing on the record that each and every element of the crime charged was explained to the accused prior to plea.

The respondent would like to examine each of these propositions since it disagrees with both.

Insofar as the first is concerned, the respondent finds it difficult to accept. Since the court stated the correct principle and said it would apply it, it would seem fair to infer that it did.

The decision, of course, talks in terms of failure to inform the accused of the element of intent but from this it does not necessarily follow that the court disregarded the circumstances surrounding the plea, particularly when those circumstances are supportive of its decision.

Certainly, the diminished intellectual capacity of Morgan and the fact that he had not fallen afoul of the law in any serious manner before this incident were

factors which would impress any court called upon to determine whether or not an accused understood what he was doing in pleading to the charge.

The lower court found that he did not understand what he was doing in making this plea and these factors, as well as the failure to inform him that intent was a necessary element of the crime, support that decision.

Obviously if the court has considered all of the circumstances, as it said it intended to do, the petitioner's second premise is simply incorrect. Assuming arguendo, however, that the petitioner's analysis of the decision is correct, it is submitted that this Court should still affirm it.

The petitioner itself recognizes that to be valid a guilty plea requires the accused to be given real notice of the true nature of the charge against him (page 15, first paragraph of petitioner's brief). The problem, of course, as the petitioner recognizes, is determining the meaning of this language. While on the one hand no one would argue that an accused needs to be told every rule of evidence or item of proof that the prosecution must amass to convict him, on the other it seems equally clear that an accused to intelligently plead must have some basic knowledge of the crime to which he is pleading.

Cases such as *United States v. Semet*, 295 F. Supp. 1084 (E.D. Okla. 1968) and *United States v. Lowe*, 367 F.2d 44 (7th Cir. 1966) are authority for the first proposition, while cases like *United States v. Cantor*, 469 F.2d 435 (3rd Cir. 1972) and *United States v. Thomas*, 468 F.2d 422 (10th Cir. 1972), cert. denied 410 U.S. 935, are authority for the latter.

The petitioner presumably would argue that the former cases support its contention that an accused need not be told of the elements of the crime to which he is pleading and has distinguished the latter on the grounds that they deal with the complex crime of conspiracy.

The respondent on the other hand interprets all of these cases as standing for the basic proposition that where the element which was not explained to the accused was one of technical proof, his ignorance does not invalidate his plea. But where the unexplained element is a substantial feature of the crime charged he must be aware of it for his plea to be valid.

In other words, an accused's plea of guilty to a charge of postal robbery is valid even though the accused was not advised that the proof must show that in the course of the robbery he placed lives in jeopardy. *United States v. Semet*, 295 F. Supp. 1084 (E.D. Okla. 1968). But where the element of which the accused is ignorant is the very essence of the charge, his plea cannot be an intelligent one. Obviously the feature that distinguishes murder in the second degree from lesser forms of homicide is the element of intent. Intent is truly an integral part of the crime and the failure to advise the accused that the prosecution, among other things, has to prove intent makes his plea constitutionally defective. If the standard of voluntariness is the requirement that the accused know the true nature of the crime to which he is pleading how can it be argued that he is not required to know what is truly the central characteristic of the crime to which he pleads.

For the petitioner to argue that a person accused of murder in the second degree need not be informed that intent is an element of that crime, while a person

accused of conspiracy must have that charge explained to him in some detail, seems particularly unpersuasive. The petitioner distinguishes the two situations by saying that one crime is simple and the other is complex.

The conspiracy cases are not an exception to the general rule based upon their complexity, but are really merely an example of its implementation. In other words, they don't stand for the proposition that in complex cases there must be, as the petitioner puts it, a formal recitation of the legal elements of the crime.

They do stand for the principle that for any guilty plea to be valid it must be intelligently made by an accused who understands what he is doing. The crucial issue becomes not the simplicity or complexity of the charge, but whether the accused understood it. If the charge is simple and the accused intelligent, very little explanation would seem to be required. Conversely, if the charge is complex, or indeed is simple but the accused by reason of his age, inexperience or intellect is limited in understanding, he must be told enough of the elements of the charge so that he truly understands the nature of the crime to which he is pleading.

It seems obvious that each case must turn upon its particular facts in deciding whether the accused has the requisite understanding which, of course, is the respondent's fundamental position on this appeal.

CONCLUSION

The judgment below should be confirmed.
Dated: Auburn, New York, December 19th, 1975.

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